



May 3, 2000

Mr. Keith Stretcher
Assistant City Attorney
City of Midland
P.O. Box 1152
Midland, Texas 79702-1152

OR2000-1725

Dear Mr. Stretcher:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 134768.

The City of Midland Police Department (the "department") received five requests for the police report related to an accident involving two named individuals that occurred on a specified date in 1963. You claim that the information is excepted from disclosure under sections 552.101, 552.108 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

You seek to withhold this information as a juvenile record under section 552.101 in conjunction with section 58.007 of the Family Code. The act most recently amending section 58.007 provides that conduct occurring before the effective date of the act "is covered by the law in effect at the time the conduct occurred, and the former law is continued in effect for that purpose." Acts 1999, 76th Leg., ch. 1477, § 39(a). Section 58.007(c) applies to juvenile law enforcement records concerning conduct that occurred on or after September 1, 1997. The statutory restrictions on the release of juvenile records that were in effect in 1963 apply only to "juvenile court records."

Section 15 of V.T.C.S. article 2338-1, adopted in 1943, provided that "Juvenile Court records shall not be inspected by persons other than probation officers or other officers of the Juvenile Court unless otherwise directed by the court." Acts 1943, 48th Leg., ch. 204, § 15.

The juvenile records you submit as responsive to the request here pertain to conduct which occurred in 1963; thus, the records are subject to section 15 of article 2338-1 as adopted in 1943 and quoted above. Unless these are "juvenile court records," the provision

does not make the records confidential. In the instant case, the information appears to be an accident report with accompanying photos, not a court record protected by the 1943 provision. Thus, you may not withhold the information under section 552.101 in conjunction with section 15 of V.T.C.S. art. 2338-1.

You also argue that the information at issue is protected under common law and constitutional privacy. Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Section 552.101 encompasses common law privacy and excepts from disclosure private facts about an individual. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Therefore, information may be withheld from the public when (1) it is highly intimate and embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) there is no legitimate public interest in its disclosure. *Id.* at 685; Open Records Decision No. 611 at 1 (1992).

The constitutional right to privacy protects two interests. Open Records Decision No. 600 at 4 (1992) (citing *Ramie v. City of Hedwig Village*, 765 F.2d 490 (5th Cir. 1985), *cert. denied*, 474 U.S. 1062 (1986)). The first is the interest in independence in making certain important decisions related to the “zones of privacy” recognized by the United States Supreme Court. Open Records Decision No. 600 at 4 (1992). The zones of privacy recognized by the United States Supreme Court are matters pertaining to marriage, procreation, contraception, family relationships, and child rearing and education. *See id.*

The second interest is the interest in avoiding disclosure of personal matters. The test for whether information may be publicly disclosed without violating constitutional privacy rights involves a balancing of the individual’s privacy interests against the public’s need to know information of public concern. *See* Open Records Decision No. 455 at 5-7 (1987) (citing *Fadjo v. Coon*, 633 F.2d 1172, 1176 (5th Cir. 1981)). The scope of information considered private under the constitutional doctrine is far narrower than that under the common law; the material must concern the “most intimate aspects of human affairs.” *See* Open Records Decision No. 455 at 5 (1987) (citing *Ramie v. City of Hedwig Village*, 765 F.2d 490, 492 (5th Cir. 1985), *cert. denied*, 474 U.S. 1062 (1986)).

Based upon the arguments and the documents you submitted, we conclude that you have not established the applicability of either common law or constitutional privacy to the information at issue. Nor does the information appear on its face to be subject to section 552.101. Therefore, you may not withhold the information from the requestor based upon section 552.101 and common law or constitutional privacy.

You also assert that the information at issue may be excepted from disclosure under section 552.108(a)(2). However, we believe the submitted document is a peace officer’s accident report that appears to have been completed pursuant to chapter 550 of the Transportation

Code. *See* Transp. Code § 550.064 (officer's accident report). Thus, access to this information is governed by provisions outside the Public Information Act.

The Seventy-fifth Legislature repealed article 6701d and amended section 550.065 of the Transportation Code concerning the disclosure of accident report information. *See* Transp. Code § 550.065. However, a Travis County district court has issued a permanent injunction enjoining the enforcement of the amendment to section 550.065 of the Transportation Code. *Texas Daily Newspaper Ass'n, v. Morales*, No. 97-08930 (345th Dist. Ct., Travis County, Tex., April 26, 2000). The district court has declared that the law in effect prior to the passage of S.B. 1069 now governs and remains unaffected by the permanent injunction. The law in effect prior to the passage of S.B. 1069 was section 47 of article 6701d, V.T.C.S.¹

Section 47(b)(1) provides that:

The Department or a law enforcement agency employing a peace officer who made an accident report is required to release a copy of the report on request to:

. . . .

(D) a person who provides the Department or the law enforcement agency with two or more of the following:

- (i) *the date of the accident;*
- (ii) *the name of any person involved in the accident; or*
- (iii) the specific location of the accident

V.T.C.S. art. 6701d, § 47(b)(1) (emphasis added). Under this provision, a law enforcement agency employing a peace officer who made an accident report “is required to release” a

¹Although the Seventy-fourth Legislature repealed and codified article 6701d as part of the Transportation Code, the legislature did not intend a substantive change of the law but merely a recodification of existing law. Act of May 1, 1995, 74th Leg., R.S., ch. 165, §§ 24, 25 1995 Tex. Gen. Laws 1025, 1870-71. Furthermore, the Seventy-fourth Legislature, without reference to the repeal and codification of V.T.C.S. article 6701d, amended section 47 of article 6701d, V.T.C.S., relating to the disclosure of accident reports. Act of May 27, 1995, 74th Leg., R.S., ch. 894, § 1, 1995 Tex. Gen. Laws 4413, 4414. Because the repeal of a statute by a code does not affect an amendment of the statute by the same legislature which enacted the code, the amendment is preserved and given effect as part of the code provision. Gov't Code § 311.031(c). Thus, the amendment of section 47 of article 6701d, V.T.C.S. is the existing law regarding the availability of accident report information. *See* Act of May 27, 1995, 74th Leg., R.S., ch. 894, § 1, 1995 Tex. Gen. Laws 4413, 4414. *See also* Act of May 8, 1997, 75th Leg., R.S., ch. 165, § 30.125, 1997 Tex. Gen. Laws 327, 648.

copy of an accident report to a person who provides the law enforcement agency with two or more pieces of information specified by the statute. *Id.* In the situation at hand, three of the requestors have provided the department with two of the pieces of information specified by the above statute, the date of the accident and the name of two persons involved. Because the Midland Police Department is “a law enforcement agency employing a peace officer,” we conclude that the department is subject to the requirements of section 47(b)(1) of article 6701d of the Texas Civil Statutes. Thus, the department may not withhold the accident report from these three requestors pursuant to section 552.108(a)(2) of the Government Code.² However, the fourth and fifth requestors, Ms. Sylvia Lee Wingfield and Ms. Laura Dennis, provided the department with only one piece of correct information; therefore, pursuant to section 47(b)(1) of article 6701d of Texas Civil Statutes, the accident report may not be released to either Ms. Wingfield or Ms. Dennis.

Finally, we address your claimed exception under section 552.130. Section 552.130 of the Government Code excepts information that relates to a motor vehicle operator’s or driver’s license or permit issued by an agency of this state or a motor vehicle title or registration issued by an agency of this state. However, access to the accident report is governed, not by the Public Information Act, but by section 47 of article 6701d of the Texas Civil Statutes. Thus, the accident report must be released in its entirety as authorized by section 47 of article 6701d.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the

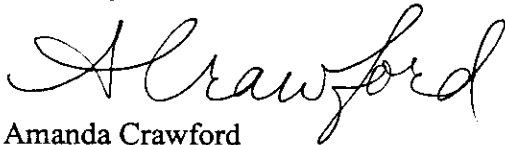
²It appears that the photographs submitted were taken and compiled as part of the accident report. If the photographs are part of the accident report, they must be released.

governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.–Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in cursive script, appearing to read "A Crawford".

Amanda Crawford
Assistant Attorney General
Open Records Division

AEC/nc

Ref: ID# 134768

Encl. Submitted documents

cc: Mr. Steve Herz
Star Magazine
660 White Plains Road
Tarrytown, New York 10591
(w/o enclosures)

Mr. Ed Todd
Midland Reporter-Telegram
201 E. Illinois
Midland, Texas 79701
(w/o enclosures)

Mr. George Kuempel
Dallas Morning News
Austin Bureau
1005 Congress, Suite 930
Austin, Texas 78701
(w/o enclosures)

Ms. Sylvia Lee Wingfield
The Associated Press
4851 LBJ Freeway, Suite 300
Dallas, Texas 75244
(w/o enclosures)

Ms. Laura Dennis
The Odessa American
222 E. 4th Street
Odessa, Texas 79761
(w/o enclosures)